

PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

DRAFT DATE: October 7, 2009

Rod Bradley  
BHA, Inc.  
5115 Avenida Encinas, Suite L  
Carlsbad, CA 92008

**DRAFT DECISION OF THE DIRECTOR  
DRAFT Habitat Loss Permit**

This Habitat Loss Permit cannot be relied upon as authorization for the clearing, grading or removal of any vegetation until 1) a valid Grading Permit, Clearing and Grading Permit, or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal, and 2) all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

APPLICATION NUMBER: HLP XX-XXX

ASSOCIATED PERMIT(S): TM5295RPL7; R04-008, SP03-003, GPA 05-010, S04-015, ER 02-08-047

NAME OF APPLICANT: Sugarbush LLC

DESCRIPTION/LOCATION OF LOSS:

This document presents findings required for the issuance of a Habitat Loss Permit under the Endangered Species Act Section 4(d) rule for the California gnatcatcher (*Polioptila californica californica*). The action being addressed within these findings is the removal of coastal sage scrub associated with the Sugarbush project within the County of San Diego. The Habitat Loss Permit would authorize the take of 23.3 acres of coastal sage scrub habitat, including one California gnatcatcher pair..

The proposed project is a major subdivision to create 45 residential lots on the 115.5-acre Sugarbush property. Impacts are prescribed for the entirety of the residential lots and access roads. The project will complete a Specific Plan, General Plan Amendment and Zone Reclassification to achieve maximum clustering of development. The project includes three open space lots, two that will preserve large blocks of viable habitat and one that will protect a small patch of oak woodland habitat. Primary access will be taken from Sugarbush Drive, which is located in the northern portion of the project. Sugarbush Drive will be extended southwesterly into the project site. The project site is located between Buena Vista and Twin Oaks communities northeast of San Marcos at the southern terminus of Sugarbush Drive at Buena Creek Road. It is in the North County Metro Community Planning Area in the unincorporated portion of San Diego County.

The project site is currently undeveloped, with natural vegetation, a remnant orchard and some disturbance due to the keeping of bees and chickens. Elevation of the site ranges from approximately 565 feet above mean sea level (AMSL) to 1,050 AMSL. The coastal sage scrub habitat located in the northern and eastern portions of the property will be preserved, with the proposed development focused in areas of adjacent to existing development and previous disturbance. The project proposes biological open space of a total of 75.7 acres that includes approximately 67.6 acres of coastal sage scrub, 2.8 acres of coastal sage-chaparral scrub, and 0.3-acre of coyote brush scrub (70.7 acres of scrub habitats). Approximately 75 percent of the scrub habitats onsite will be preserved in open space.

Biological surveys were conducted by Helix Environmental Planning, Inc. and summarized in the biological technical report dated ~~XXXX-2009~~. The site is dominated by coastal sage scrub habitat with some small areas of oak woodland and non-native grassland. Table 1 summarizes the vegetation communities, the proposed impacts and the required mitigation for the project.

**Impacts and Mitigation Table for Sugarbush**

Vegetation Community	Existing onsite	Total Impacts	Existing easements	Mitigation		Biological open space	Avoidance open space
				Ratio	Acreage		
Southern coast live oak riparian forest	0	0	0	3:1	-	0.0	0
Coast live oak woodland	1	0.6	0	2.2:1	1.3	1.3	0.5
Diegan coastal sage scrub	91.3	23.3	0.5	2:1	46.6	67.6	0
Coastal sage-chaparral	2.8	0	0	-	-	2.8	0

## scrub

Coyote brush scrub	0.3	0	0	-	-	0.3	0
Non-native grassland	13.5	11.1	0	0.5:1	5.6	2.4	0
Eucalyptus woodland	0.2	0.1	0	-	-	0.1	0
Non-native vegetation	2	1.7	0	-	-	0.3	0
Disturbed land	4.1	3	0	-	-	0.8	0.2
Orchard	0.1	0	0	-	-	0.1	0
Developed land	0.2	0.8	0	-	-	0.0	0
<b>TOTAL</b>	<b>115.5</b>	<b>40.7</b>	<b>0.5</b>	<b>-</b>	<b>53.5</b>	<b>75.7</b>	<b>0.7</b>

\*All areas are presented in acre(s); totals reflect rounding.

\*\*Installation of sewer pipeline would occur by jack and bore to avoid impacts to SCLORE. Water pipeline would be installed within roadbed.

\*\*\*Habitat within the avoidance open space would be preserve onsite within the western panhandle along Cleveland Trail, but would not be applied toward mitigation.

\*\*\*\*Mitigation or oak impacts would include 0.4 acre of oak woodland preservation and 0.9 acre of oak woodland creation, which would impact 0.6 acre of non-native grassland and 0.3 acre of disturbed habitat.

\*\*\*\*\*The remainder of non-native grassland mitigation would be met with preservation of excess sage scrub habitat.

In addition to the vegetation communities shown in the above Table, the project will potentially affect one individual (2003/2009) and/or one pair (2002) of California gnatcatchers, as determined by protocol surveys. Other sensitive species that were observed on the project site include ashy spike-moss (*Selaginella cinerascens*), red-shouldered hawk (*Buteo lineatus*), and turkey vulture (*Cathartes aura*). A jurisdictional drainage occurs onsite, which will have to be crossed as part of the extension of Sugarbush Drive.

The project was discussed at the Agency Batching Meeting of April 14, 2004. The site is within a block of very high value habitat on the County Habitat Evaluation Map.

Residential uses exist adjacent to the project site to the north, west and east. South of the Sugarbush property is a large block of undeveloped land that primarily consists of native vegetation including coastal sage scrub. These lands may act as a core area for gnatcatchers and other local wildlife. A upland drainage feature traverses the site that may provide additional resources for wildlife; however, it does not support riparian habitat or perennial flows. No obvious wildlife movement corridors are associated onsite. Buena Creek is located offsite to the north-northwest of the project property and provides viable movement for wildlife in the area because it provides sufficient coverage for hiding and foraging wildlife species. Offsite road improvement activities will occur within this area along Cleveland Trail, but the project will avoid impacts through jack and bore construction techniques.

All of the impacts to vegetation communities will be considered adequately mitigated on site with the proposed biological open space, fencing and signage of the preserve area, and implementation of a Resource Management Plan (RMP). Impacts to coast live oak woodland will be mitigated onsite with the preservation of 0.4 acres of existing oaks and the creation/preservation of 0.9-acre of additional oak woodland. Non-native grassland habitat will be mitigated onsite via a combination of 2.4 acres of in-kind preservation and 3.2 acres of additional coastal sage scrub in open space.

The onsite main access road will impact approximately 170 linear feet of the upland drainage and will be mitigated through habitat-based conservation and the removal of exotic plant species within the drainage area. The applicant will also acquire Agency (ACOE and CDFG) permits for impacts to Waters of the U.S./Waters of State. Non-native vegetation in the open space, such as olive trees, will also be removed as part of the final RMP. Other mitigation measures include California gnatcatcher, raptor, and migratory bird breeding season avoidance for all brushing, clearing, and/or grading activities. Pre-construction surveys may be conducted to demonstrate absence of nesting activity and work may continue with the approval of the County and wildlife agencies. Other conditions to reduce or mitigate impacts include placement of temporary construction fencing, stormwater controls (pre- and post- construction), permanent fencing/walls between development and preserve areas, and open space signs between the access road and the preserve area. Moreover, a Limited Building Zone (LBZ) easement with a minimum width of 100 feet will be dedicated between proposed homes and the open space. This will prevent the placement of habitable structures near the preserve that would ultimately result in fire-clearing impacts. The entirety of this LBZ easement will be sited on the private residential lots rather than in the open space lots.

#### DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by the either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing and Grading Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for the loss of the above-described Coastal Sage Scrub (CSS) habitat for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDF&G. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of CSS habitat expires.

CONDITIONS OF APPROVAL:

**The following conditions are being placed on TM5295RPL7. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.**

A. Prior to issuance of grading permits or improvement plans for applicable units or phases, or prior to approval of the Final Map for applicable units or phases of grading, whichever comes first, the applicant shall:

1. Grant to the County of San Diego an open space easement over the three Open Space Lots as shown on Tentative Map 5295RPL7 dated [REDACTED], 2009 on file with the Department of Planning and Land Use as ER 02-08-047. This easement is for protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation.

The sole exception(s) to this prohibition are:

- a. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.
  - b. Activities required to be conducted pursuant to a revegetation plan and Resource Management Plan approved by the Director of Planning and Land Use.
2. Grant to the County of San Diego a Limited Building Zone Easement which prohibits the construction or placement of any residence, garage, or other accessory structure designed or intended for occupancy by humans or animals,

within those portions of the Limited Building Zone Easement as shown on the Tentative Map 5295RPL7 dated [REDACTED], 2009 on file with the Department of Planning and Land Use, Environmental Review Number 02-08-047. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement. The easement shall permit the construction or placement of only the following:

- a. Decking, fences, and similar facilities.
  - b. Sheds, gazebos, and detached garages, less than 250 square feet in total floor area, that are designed, constructed and placed so that they do not require clearing or fuel modification within the biological open space easement, beyond the clearing/fuel modification required for the primary structures on the property.
3. Submit to and receive approval from the Director of the Department of Planning and Land Use a Revegetation Plan which mitigates impacts to 0.6 acre of coast live oak woodland habitat. The Revegetation Plan shall include (but not be limited to) the following to ensure the establishment of 0.9 acre of coast live oak woodland creation: objectives, 24"x 36" map showing the revegetation areas, site preparation information, type of planting materials (e.g. species ratios, source, size material, etc.), planting program, 80 percent success criteria, 5-year monitoring plan and detailed cost estimate. The cost estimate shall include planting, plant materials, irrigation, maintenance, monitoring and report preparation. The report shall be prepared by a County approved biologist and a State of California Licensed Landscape Architect. The revegetation shall occur onsite within non-native grassland habitat (As shown on Figure 5 of the Biological Technical Report dated [REDACTED] 2009). Habitat created pursuant to the Revegetation Plan must be placed within an open space easement dedicated to the County of San Diego prior to or immediately following the approval of the Revegetation Plan.
  4. Enter into a Secured Agreement with the County of San Diego Department of Planning and Land Use consisting of a letter of credit, bond, or cash for 100 percent of the estimated costs associated with the implementation of the Revegetation Plan and a 10 percent cash deposit not to exceed \$30,000. A cost estimate based on a 3% annual inflation rate shall be submitted and approved by the Director of Planning and Land Use which includes the cost of the plant stock and its installation, irrigation system and installation, cost of monitoring and maintenance of the revegetation area for the required five year period, and report preparation and staff time to review. This agreement is intended to guarantee commitment to project completion and success. The monitoring time and the length of time the Secured Agreement and cash deposit will be in effect starts at the time the installation is accepted by a County staff representative. The Secured Agreement and cash deposit shall be released upon completion of the Revegetation Plan implementation provided the installed vegetation is in a healthy condition and meets the 80 percent success criteria. Eighty- percent

success rate and one hundred percent vegetative cover, excluding herbaceous species, shall be considered satisfactory completion of the Revegetation Plan.

5. Submit to and have approval by the Department of Planning and Land Use a Resource Management Plan (RMP) for the Open Space Lots as shown on TM 5295RPL7 dated [REDACTED], 2009. The RMP shall be prepared by a County-approved consultant and submitted to the satisfaction of the Director of the Department of Planning and Land Use, the US Fish and Wildlife Service, and the California Department of Fish and Game. A deposit in the amount of \$2,410.00 and a discretionary permit application form shall accompany the submittal as prescribed in the submittal checklist for Resource Management Plans. Staff will bill to this deposit account for review of the Plan and subsequent reports. The account shall be replenished by the applicant if staff time exceeds amounts on deposit. The RMP shall include a contract, or other legal agreement, between the County and the project applicant to provide assurance of future compliance. The Resource Management Plan must include the following:
  - a. Introduction: purpose of management plan; acquisition history; any resource agency review and coordination
  - b. Implementation: responsible parties; resource manager; financial responsibility/mechanism; cost estimate; budget
  - c. Property Description: legal description; geographical setting; property boundaries and adjacent lands; geology; soils; climate; hydrology; trails
  - d. Habitat And Species Description: vegetation communities; habitats and plant species; wildlife species; rare, threatened, or endangered species; overall biological value
  - e. Cultural Resources Description: identification/evaluation; any Native American consultation or involvement; historical resources
  - f. Management Elements, Goals, and Tasks
  - g. Active management of the coast live oak woodland creation areas and removal of ornamental vegetation and invasive plants.
  - h. Contract or other legal agreement between the County, the resource manager and the landowner to provide assurance of future compliance
  - i. The Plan will also include measures to remove olive trees (*Olea europaea*) from the open space areas.
6. Upon approval of the Resource Management Plan, enter into a Secured Agreement with the County of San Diego Department of Planning and Land Use consisting of a letter of credit, bond or cash for 100% of the estimated annual cost associated with the implementation of the Resource Management Plan and a 10 percent cash deposit not to exceed \$30,000. This agreement is intended to guarantee commitment to implement the Resource Management Plan and fund County oversight and review. The cash deposit shall maintain at least \$1,000.

Failure to maintain this account shall be cause for enforcement action by the County.

7. Submit to the Director, Department of Planning and Land Use evidence that permanent signs have been placed to protect all Open Space Easements in accordance with on the Sugarbush Open Space Exhibit as an attachment to the Biological Resources Report dated [REDACTED], 2009 on file with the Department of Planning and Land Use as Environmental Review Number 02-08-047. Evidence shall include photographs of a sign placed on the project and a stamped, signed statement from a California Registered Engineer, or licensed surveyor that permanent signs have been placed on the open space easement boundaries in accordance with the requirements of this condition. The signs must be corrosion resistant and 6" x 9" minimum in size, on posts not less than 3 feet in height from the ground surface and must state the following:

**Sensitive Environmental Resources  
Area Restricted by Easement**

Entry without express written permission from the County of San Diego  
is prohibited. To report a violation or for more information about easement  
restrictions and exceptions contact the County of San Diego,  
Department of Planning and Land Use  
Reference: (TM 5295RPL7, ER# 02-08-047)

8. Provide the US Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), and the County Director of Planning and Land Use evidence of a contract with a County approved biologist showing that the biologist has been retained to monitor clearing, grading and construction activities. Responsibilities of the monitoring biologist will include: completion of pre-construction surveys; inspection of temporary fencing and erosion control measures; supervision of dust control measures; education of construction personnel; monitoring appropriate noise levels, submission of weekly reports to the USFWS; and submission of a final report to the USFWS, the CDFG, and the County Director of Planning and Land.
  9. Provide the Director of Planning and Land Use with a copy of a Clean Water Act, Section 401/404 permit issued by the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers for all project related disturbances of wetlands or provide evidence satisfactory to the Director of Planning and Land Use that such permit is not required.
  10. Provide the Director of Planning and Land Use with a copy of a Streambed Alteration Agreement issued by the California Department of Fish and Game for all project related disturbances of any streambed or provide evidence satisfactory to the Director of Planning and Land Use that such an agreement is not required.
- B. The following specific notes shall be placed on any of the following plans: grading, and or improvement plans, and/or building plans:



1. "Prior to the commencement of grading activities conspicuous temporary fences shall be in place to protect natural resources when any clearing, grading, or construction is within 100 feet of Biological Open Space or offsite natural vegetation, as follows:
  - a. Grading and/or improvement plans shall include the requirement that temporary fences shall be placed to protect all open space easements shown on the Tentative Map which preclude grading, or brushing or clearing. The subdivider shall submit to the Department of Planning and Land Use a joint statement from the County-approved biological monitor and a California Registered Engineer or licensed surveyor that temporary fences have been placed in all locations of the project where proposed grading or clearing is within 100 feet of an open space easement boundary. The temporary fence locations shall be identified in the field by the County-approved biological monitor and positioned between the open space easement boundary and any area of proposed disturbance.
  - b. The temporary fencing shall be removed only after the conclusion of such activity."
2. "Prior to the conclusion of grading activities and Final Grading release placement of permanent fencing/walls and open space signage is required as follows:
  - a. Grading and/or improvement plans shall include the requirement that permanent fences or walls shall be placed along the open space boundaries between the open space and development footprint. The property owner shall submit to the Director, Department of Planning and Land Use a signed, stamped statement from a California Registered Engineer, or licensed surveyor that permanent fences or walls have been placed to protect from inadvertent disturbance all open space easement that do not allow grading, brushing or clearing. Permanent fencing or walls are required in all locations of the project as shown on the Sugarbush Open Space Exhibit in the Biological Technical Report dated [REDACTED], 2009 on file with the Department of Planning and Land Use as Environmental Review Number 02-08-047. Placement of permanent fencing or walls is required at the conclusion of the grading activity and prior to Final Map approval.
  - b. The permanent fence location(s) shall be identified in the field by a California Registered Engineer or licensed surveyor and positioned just outside of the open space easement. Photographs and a brief description of design and materials used shall be submitted with the statement from the California Registered Engineer.
  - c. Construction materials and fence or wall height shall match that shown on the Sugarbush Open Space Exhibit in the Biological Technical Report dated [REDACTED], 2009 and are subject to approval by the Department of Planning and Land Use."

3. "Restrict all brushing, clearing and/or grading such that none will be allowed within 500 feet of a raptor nest during the breeding season for raptors. This is defined as occurring between February 1<sup>st</sup> and June 1<sup>st</sup>. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no nesting raptors are present in the vicinity of the brushing, clearing or grading."
4. "Restrict all brushing, clearing and/or grading such that none will be allowed during the breeding season of the California gnatcatcher (*Polioptila californica californica*). This is defined as occurring between February 15<sup>th</sup> and August 30<sup>th</sup>. The Director of Planning and Land Use, may waive this condition, through written concurrence from the United States Fish and Wildlife Service and the California Department of Fish and Game, that no California gnatcatchers are present in the vicinity of the brushing, clearing or grading."
5. "Restrict all brushing, clearing and/or grading such that none will be allowed during the breeding season of the migratory birds. This is defined as occurring between February 15<sup>th</sup> and August 31<sup>st</sup>. The Director of Planning and Land Use, may waive this condition, through written concurrence from the United States Fish and Wildlife Service and the California Department of Fish and Game, that no active nests are present in the vicinity of the brushing, clearing or grading."
6. Night lighting of construction office or equipment areas will be of the lowest illumination necessary for human safety, selectively placed, shielded, and directed away from adjacent habitats or residential areas, and shall otherwise conform to Section 6324 of the Zoning Ordinance."
7. "Construction noise shall not exceed 60 dBA<sub>Leq</sub> during the California gnatcatcher breeding season when active nests are present. A monitoring biologist and/or noise specialist will periodically monitor the affected area."

#### ENVIRONMENTAL FINDINGS:

##### A. CEQA Findings

To be provided.

##### B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will potentially impact 23.3 acres of coastal sage scrub (CSS) and one pair of California gnatcatcher (*Poliophtila californica californica*). Approved CSS losses as of the date of April 30, 2009 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP) are presented in the following table:

Unincorporated Area CSS Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1,159.82 acres
Net loss due to this project:	23.3 acres
Total cumulative loss:	1,183.12 acres
Remaining loss under five percent guideline:	1,770.18 acres

Therefore, the habitat loss does not exceed the five percent guideline.

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The project site is located in the far northwest corner of a somewhat large habitat area. This "core area" qualifies as being of intermediate value for long-term conservation based on the Evaluation Logic Flowchart within the Southern California Coastal Sage Scrub NCCP Conservation Guidelines. The area is also mapped as very high value on the North County Multiple Species Conservation Program (MSCP) Habitat Evaluation Model. The project site supports 98.4 acres of coastal sage scrub type habitats. This habitat onsite is known to support the federally threatened California gnatcatcher. One gnatcatcher pair was observed in 2002 and a single individual was observed in 2003 and 2009. Other sensitive species may also utilize the site for nesting and/or foraging. A minor drainage feature traverses the site in a east-west direction in the northern portion of the property. While this feature may support some wildlife movement, the drainage will not be significantly disrupted. The project will include a single crossing in order to access the site. The crossing will include a box culvert that will not substantially alter flows or create a barrier for wildlife.

The project will not preclude connectivity between areas of high habitat values because the development will be clustered in the southwest corner of the site where it will be adjacent to existing development and disturbed lands. The project is designed to maintain connectivity of preserved habitats onsite with regional connections to large offsite vacant lands to the east and south. Direct impacts to coastal sage scrub habitat will be only 23.1 acres (25 percent of this habitat type) onsite and an additional 0.2-acre offsite. As such, the integrity of the core area that extends into San Marcos will not be compromised. Furthermore, at least 75 acres of high-quality and contiguous habitat will be preserved in perpetuity, thereby exceeding the mitigation ratio requirement of the NCCP planning process. Enhancement and resource management of the open space

will make the preserve area more viable and more likely to support and sustain sensitive species. This will also promote the future preservation of the core area to the south and east.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The loss of 23.3 acres of Diegan coastal sage scrub will not preclude or prevent the preparation of the North County MSCP or any other subregional NCCP since the project proposes to cluster development in one corner and preserve 75 acres of the remaining habitat. A substantial area of coastal sage scrub is anticipated to remain undisturbed south and east of the project site, where a future preserve system may be planned. From the eastern edge of the proposed development boundary, the project will preserve a width of 500 feet of habitat within biological open space. Another 2500 feet of habitat extends offsite to the east. Offsite to the south, the core area of habitat contains a pinch-point of approximately 1,000 feet where existing residential uses narrow the east-west biological core area.. It then widens again where a riparian corridor (Hedionda Creek) runs northeast to southwest. Extensive upland habitat areas that include high-quality coastal sage scrub continue southeast into the City of San Marcos. Although the overall habitat system in this area contains steep topography and is somewhat isolated by surrounding development, it is a biologically viable core area that will not be further hindered by the proposed Sugarbush project because of project (re) design and mitigation measures proposed to reduce direct and indirect impacts. While the project site does not contain a high density of sensitive species, this core resource area will still continue to provide valuable breeding and foraging areas for indigenous species such as the California gnatcatcher. The project proposes to minimize impacts by focusing development adjacent to existing development and previously disturbed areas. The interface between the proposed residential homes and the proposed open space has been kept to a minimum by the preparation of a specific plan that allows smaller lot sizes and larger open space areas. A combination of walls and fences will separate the community from the biological resources to be preserved, and long-term management of the open space will help to ensure habitat and species viability. The onsite preserve area will benefit any future subregional NCCP planning effort.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

The Sugarbush project has undergone several major design changes in order to minimize impacts to coastal sage scrub to the extent feasible. The final proposed project incorporates a specific plan approach in order to reduce sprawl and maximize the surface area of the proposed open space. In addition to the clustered project design and the large-block preserve design, the project will also take steps to ensure

that indirect impacts are minimized and that the preserve system will have long-term viability. The following mitigation measures have been incorporated into the project:

- Dedication of a Limited Building Zone easement in order to prevent fire-clearing impacts within open space.
- Implementation of a Revegetation Plan for the creation of Coast Live Oak Woodland, to improve the minor drainage at the entrance of the site, and to remove exotic invasive species within the coastal sage scrub areas.
- Implementation of a long-term Resource Management Plan (RMP) to ensure that the open space lots are managed in perpetuity. The RMP will also ensure that active management and creation/enhancement of the open space is executed as prescribed in the Biological Technical Report and DEIR.
- Placement of restrictive signs between the access road and open space boundaries.
- Placement of temporary fencing during grading/clearing under the supervision of a biological monitor.
- Placement of permanent walls and fencing between development areas and open space.
- Implementation of grading and clearing during non-breeding season months for California gnatcatcher, raptor species, and migratory birds.

The project will also be required to obtain the necessary state and federal permits for work conducted within a wetland and/or non-wetland waters of the US. At that time, additional mitigation measures, or alternative but equal measures, may be required in accordance with state and federal guidelines. With all of the design elements and mitigation measures incorporated into the Sugarbush project, it has been found that the area proposed for habitat loss has been minimized and mitigated to the maximum extent practicable.

**Finding 2    The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.**

The removal of 23.3 acres of coastal sage scrub associated with the residential development will not reduce the likelihood of survival and recovery of a listed species, including the federally threatened California gnatcatcher. The Sugarbush property is known to support this species, as one gnatcatcher pair was observed in 2002 and a single individual was observed in 2003 and 2009. No other listed plant or animal species are known to occur or are likely to occur within the vicinity of the project. Although 23.3 acres of California gnatcatcher habitat will be directly impacted by the project, it is not expected to affect the species' survival and recovery in this area because the project proposes to place 67.6 acres of coastal sage scrub habitat within biological open space. This preserve area will be contiguous with the extensive area of coastal sage scrub to the south and east and it will be managed in perpetuity by an established conservancy. The onsite open space is configured such that it constitutes a large contiguous block with no man-made walls/barriers. It has been designed to include the locations where gnatcatchers were previously observed. Moreover, the

initial habitat loss will occur during non-breeding season months (September 1 through February 14) to ensure that the clearing of vegetation does not potentially affect nesting activity.

In addition, the project will not impede any regional or local corridors or linkages. A single crossing is proposed for the onsite drainage at the northern property boundary. However, this drainage does not support riparian habitat and would not serve as an important wildlife resource for water, food, cover, or dispersal. The proposed crossing will include installation of a box culvert that will not disrupt the seasonal flow and will still allow passage of small to medium size animal species. The proposed onsite access road will be 50 feet wide at grade, and not a thoroughfare so that traffic will be minimal at night when wildlife has the greatest potential for crossing. The project will not create a substantial barrier between resource areas, especially for the avian species that have been observed on the site. Some oak woodland habitat and some Eucalyptus woodland does occur along the drainage and may provide potential nesting sites for predatory birds. However, the majority of these woodland areas will be preserved within biological open space. And any grading and clearing will occur between June 2 and January 31, which is outside the breeding season for raptors.

The substantial open space onsite, coupled with the undisturbed areas to the south and east, will provide breeding and foraging habitat for sensitive wildlife species and will also allow perpetuation of native plant species. Additionally, the project Resource Management Plan will include a provision to remove ornamental and invasive plant species such as olive trees that occur in the proposed preserve area. The project has minimize edge effects through project (re) design and will also minimize indirect impacts to the open space by maintaining all fire clearing on the residential lots, separating development with walls and fences, and placing signs that prohibit intrusion in the open space. Therefore, project will not directly affect listed species' survival or recovery.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The project will require a grading permit, clearing permit, and/or road improvement plan. Construction will not commence until all appropriate permits have been approved and issued. In addition, the project will be required to be in conformance with all applicable laws, ordinances and acts; including the Southern California Coastal Sage Scrub NCCP and the County of San Diego's Habitat Loss Permit Ordinance 8365. This will require the issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Game and U.S. Fish and Wildlife Service, prior to the clearing of any Coastal sage scrub supported on the project site. A state Streambed Alteration Agreement and a federal Section 401/404 permit are also identified as being required at this time. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to "otherwise lawful activities".

## NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **No.** The land is part of a satellite area north of a Subregional Focus Area that lies south of Highway 78.
5. Is the land located in a corridor between higher value districts. **No.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the Sugarbush project is defined as being "Intermediate Value for long-term conservation."

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this draft Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

A.1 through A..10; B.1 through B.7

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

N/A

**NOTICE:** The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

**NOTIFICATION TO APPLICANT:** Because your project has an effect on native biological resources, State law requires the payment of a \$\_\_\_\_\_ fee to the California Department of Fish and Game for their review of the Environmental Impact Report (Fish and Game Code §711.4) and a \$\_\_\_\_ administrative fee to the County (\$\_\_\_\_\_ total). If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable). **The payment must be by certified check or cashier's check payable to the "County of San Diego" and can be submitted to the cashier at the DPLU office or directly to the County Clerk.** The fees (excluding the administrative fee) may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

**JUDICIAL REVIEW TIME LIMITATIONS:** The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the



record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on TO BE DETERMINED. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE  
ERIC GIBSON, DIRECTOR

BY:

JASON GIFFEN, Section Chief  
Project Planning Division

Attachments

Vegetation and Sensitive Resource Impacts and Open Space Exhibit  
USGS Map

cc: List will be provided at time of final HLP





